August 10, 2009

Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Southern California Edison Company Advice 2364-E Protest of Intertie Corporation, FIT Coalition, Solar Power Development Partners, LLC and RightCycle.

To whom it may concern:

Intertie Corporation, FIT Coalition, Solar Power Development Partners LLC, and RightCycle respectfully submit this joint protest of Advice Letter ("AL") 2364-E, submitted by Southern California Edison Company ("SCE") on July 20, 2009. In AL 2364, SCE seeks approval of the process and criteria for evaluating offers received pursuant to competitive actions with respect to the 250 megawatt ("MW") designated for independent power producers, and approval of SCE's proposed standard form power purchase agreement ("PPA").

I. Introduction and Summary

Intertie Corp. ("Intertie") is an energy consulting firm advising commercial building owners on utilizing idle real estate assets (commercial rooftops & non-developable land) in Southern California for PV generation.

FIT Coalition is an organization dedicated to implementing Feed-In Tariffs, the most effective policy in the world for bringing cost-effective renewables online, in America. The FIT Coalition is actively involved in the AB1106 legislation that is staged to bring a comprehensive FIT to California this year.

Solar Power Development Partners LLC is a California-based firm that designs, develops, and manages solar power PV farms for investors in the MW size range deployed in the Southwestern United States and in Europe. Southern California is a primary target market. SPDP also provides consulting and management services for solar technology companies. RightCycle is a consultancy/advocacy focused on achieving desirable policy outcomes that promote renewable energy and clean technology.

These parties, jointly referred to as the Sensible Policy Parties ("SPPs"), represent potential participants in the SCE Solar PV Program ("SPVP"). The SPPs are relatively small entities that either did not have the financial resources to actively participate in the underlying proceeding or erroneously assumed that there existed actively participating parties that would assure that SCE's proposal would be far more simple, fair, and effective. The SPPs did

participate in the July 31, 2009 implementation workshop, and offer the following comments and recommendations.

II. Protest

The SCE SPVP implementation proposal outlined in Advice 2364-E and discussed at the 31 July 2009 workshop incorporates an unacceptable level of risk to potential project developers. In particular, certain of the upfront vetting mechanisms proposed by SCE are unfair to developers that have not yet done business with SCE and/or are developing projects with technologies that have not yet been deployed in connection with SCE. The SPPs discuss in detail below the key elements that must be improved in order to make the SCE proposal simple, fair, and effective for all parties:

1) On page 8 of Advice 2364-E, SCE indicates that evaluation criteria will include "[t]he ability of the local electrical grid to absorb additional solar generating capacity without triggering upgrades in the CAISO controlled transmission system." In order to fairly implement the inclusion of this measure, preferred interconnect locations must be identified in advance with enough specificity so that developers know the available capacity and network upgrade costs associated with potential development locations; otherwise time and money will often be wasted gaining control of sites that are uneconomical for development due to excessive network upgrade costs. The SCE proposal to provide a list of zip codes (see Advice 2364-E, p. 4 and slide 8 of the SCE presentation at the July 31, 2009 implementation workshop) is totally insufficient and would maintain the excessive barriers and inefficiencies that exist in the RPS process. Potential network upgrade costs associated with even a tiny 1MW project could range from zero to millions of dollars. This kind of variability is unacceptable in an auction-based mechanism like the one proposed by SCE. Therefore, the SPPs recommend that the Commission order SCE to provide, as part of the solicitation package, specific information, through a list or other mechanism, adequate to provide participants a means of determining which specific locations are preferred for purposes of project evaluation. As an alternative to pre-identifying preferred locations and specifying associated capacity and network upgrades costs, the Commission could normalize the network upgrade experience by setting a fixed per kW network upgrade cost for all projects that enter the bidding process. This level could be zero if all network upgrade costs are simply absorbed in the ratebase like the anticipated manner of ratebasing network upgrade costs associated with SCE's 250MW of utility owned generation ("UOG") under the same application.

2) The viability calculator should be eliminated from the process as it unnecessarily creates an unlevel playing field and introduces tremendous uncertainty, inefficiency, and unnecessary cost. Instead, a non-refundable application fee of $1,000 should be required for each bid that will be competing in the bidding process. Given the miniscule size of the SPVP, only about 50MW per year, and its negligible potential impact to the grid, the only real viability risk is borne by the developers in the form of application fee of $1,000 (as proposed here), development security of $20,000 per MW, development timeline

requirement of 18 months, insurance requirements, 100% performance based revenue, and CAISO-mandated scheduling requirements and associated imbalance payments. All of the risk and associated costs are borne by the developers and the accumulation of all this is sufficient to motivate developers to self-govern the viability of their technology, supply relationships, and financing arrangements. No bidder is engaging this process intending to lose money. That is not to say that there will not be some failures, it is only to say that the negligible impact of the failures means there is no excuse for SCE to erect barriers that create an unlevel playing field that is rife with uncertainty, inefficiency, and unnecessary cost.

3) All IPP projects that interconnect directly to SCE-owned distribution/transmission facilities should be eligible for the SCE's SPVP. Under the IPP portion of the SPVP, SCE should buy PV generated power from the best projects available for the benefit of SCE customers. On page 7 of Advice 2364-E, the second bullet point, the provision that "a project must be within SCE's service territory", could be interpreted as denying SCE customers access to potentially ideal rooftops or ground locations that are adjacent or near distribution/transmission that is owned by SCE but may not be in SCE's defined "service territory." Decision 09-06-049 orders that SCE own, install, operate and maintain …PV Projects "located in Southern California Edison Company's service territory on existing commercial rooftops". The Decision also orders that SCE "seek competitive bids for power purchase agreement (PPA) for electricity from another 250 MW of solar PV rooftops that are owned, installed, operated and maintained by independent power producers (IPPs)". The Decision does not require IPP projects to be within SCE's ambiguously defined service territory. (see Ordering Paragraph 1). Rather the Decision enables IPPs to develop the best possible sites for the benefit of SCE ratepayers. Hence, requiring the IPP Project to interconnect directly with SCE-owned distribution or transmission facilities is reasonable, but a limitation to SCE's "service territory" is not. Further, since all power sold from IPP projects shall be sold at wholesale, any references to retail (such as the Service Account location in Section 2.2 of the Solar Photovoltaic Power Purchase and Sale Agreement) need to be removed.

4) SCE's proposed buyout option to itself for 10 cents a Watt (see Advice 2364-E at 9, proposed PPA section 10, slide 37 of the SCE presentation at the July 31, 2009 implementation workshop) is equivalent to a taking without just compensation. SCE's self-serving buyout option proposal is an unfavorable construct that has appeared outside of the A.08-03-015 proceeding and Decision 09-06-049. Hence, the buyout bullet point should be stricken from page 9 of Advice 2364-E and Section 10 of the proposed PPA should be removed entirely. Further, this buyout option should be replaced with a mutually reasonable option to the developer to engage in an additional 10 year agreement based on then prevailing Market Price Referent (MPR) for renewable energy, or equivalent proxy, for the value of the products provided.

5) While projects will generally be in the 1 to 2 MW range as dictated by the availability of sites supporting this size range, it is important that the program does not penalize the limited number of potential projects greater than 2 MW by requiring additional contract

terms. Commercial rooftops greater than 500,000 ft that employ efficient PV technologies can achieve project capacities greater than 2 MW. While these sites have the ability to provide the most cost-effective PV installations, they will still be subject to the standard interconnect procedures. Any "additional contract terms" would penalize the potential benefits of larger projects. Footnote 15 in Advice 2364-E, which states "Additional contract terms may be required for projects greater than 2 MW", should be stricken.

6) A multi-round bidding concept (see Advice 2364-E, p.4, slide 19 of the SCE presentation at the July 31, 2009 implementation workshop) should not be introduced as it would cause immense uncertainty that translates into unwarranted barriers and transaction costs to developers; and ultimately higher costs to the ratepayers. The two-step bid process would introduce many more problems than benefits. One concern is the ability for bidders to game the bidding process by submitting lower priced Indicative Non-Binding Offers to improve their position for short list selection and then raising the price of their subsequent Binding Offers. References to Non-Binding Offers in sections 3, 4 & 5 on pages 5 & 6 should be removed. A single-round auction process should be implemented based on a single Binding Offer.

7) The ownership of all projects in the program must have the ability to be transacted without constraint, and a project owner should be able to assign for purposes of financing without obtaining prior consent from SCE. The following language should be added to section 19: "provided, however, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, and (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement."

8) While SCE's proposal provides SCE with the right to enforce any Binding Price Offer at the terms presented (see slide 17 of the SCE presentation at the July 31, 2009 implementation workshop), there must be a corollary requirement for SCE to accept any Binding Price Offer at the terms presented if it is deemed to be a winning bid according to objective criteria; as audited by the Independent Evaluator or other independent auditing entity that is assigned by the CPUC. In order to provide a level playing field, this SPVP process must be transparent and deterministic such that the bids that win on their quantitative merits must be taken. Although SCE may prefer having discretion, this requirement will only apply to the bids that win on their quantitative merits. Any right for SCE to deny a project at its discretion would be unfair and introduce uncertainty that would translate into inefficiency, cost, and could lead to severe abuse. Such a right is totally unnecessary and would be rife with looming problems.

9) The program definition should clarify that there is no limitation in project ownership. There was debate that arose in the July 31, 2009 implementation workshop about whether it could be problematic to refer to a project owner as a utility customer. While SCE stated that it has no intention of limiting the program to its customers, it was clear that SPVP participants are wholesale suppliers, not customers, and it would be inaccurate and potentially problematic to use the "customer" designation. References to SPVP suppliers should refer to them as "wholesale suppliers" or something similarly accurate.

10) SCE's proposal must not limit a property owner from implementing a California Solar Initiative "CSI") project on the same site as a SPVP project; as long as the projects are operated, metered, and interconnected separately. Since SPVP projects are always interconnected on the utility side of the meter and CSI projects are always interconnected on the customer side of the meter, there is no possibility for these entirely separate projects to intermix. While SCE stated verbally at the July 31, 2009 implementation workshop that it has no intent of attempting to preempt a property owner from implementing both a CSI project and a SPVP project, SCE's presentation content specifies such a limitation (see slide 14 of the SCE presentation at the July 31, 2009 implementation workshop). The Commission should provide clarification that any site can house both a SPVP project and a CSI project.

In conclusion, the SPPs appreciate this opportunity to provide comments and suggestions for implementing the SPVP in a manner consistent with the Commission's policies, the stated purpose of the program, and the needs of the State of California for sensible renewable energy policy.

Sincerely,

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